

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO BEVERLY HILLS, INCORPORATED AND THE WILTON COMPANIES, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185, 62.1-44.15(8a) and (8d) between the State Water Control Board, Beverly Hills, Incorporated, and The Wilton Companies, LLC for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Application" or "JPA" means Joint Permit Application No. 03-1318, received by DEQ on June 18, 2003.
2. "BHI" means Beverly Hills, Incorporated, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents. BHI is a person pursuant to Va. Code § 62.1-44.3 and 9 VAC 25-210-50, which defines a "person" as one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality.
6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
7. "NOV" means Notice of Violation.
8. "Order" means this document, also known as a Consent Special Order.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Site" means the Walgreens at the Shops at John Rolfe, a 3 acre commercial development located on the northeast quadrant of the intersection of John Rolfe Parkway and Ridgefield Parkway in Henrico County, Virginia.
11. "Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "Wilton" means The Wilton Companies, LLC, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Wilton is a person pursuant to Va. Code § 62.1-44.3 and 9 VAC 25-210-50, which define a "person" as one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

SECTION C: Findings of Fact and Conclusions of Law

1. BHI owns the Site, a 3-acre parcel at the northeast quadrant of the intersection of John Rolfe Parkway and Ridgefield Parkway in Henrico County, Virginia.
2. On June 18, 2003, DEQ received Joint Permit Application 03-1318 from Wilton, the developer of the Site. The Application requested authorization from DEQ to fill 0.15 acre of forested wetlands for the construction of a small commercial development.
3. By letter dated July 3, 2003, DEQ staff informed Mr. Richard S. Johnson, President of BHI and Managing Member of Wilton, that additional information was needed to complete the Application. The information requested included the permit application fee, a description of attempts to avoid and minimize wetland impacts, the proposed wetland mitigation bank name and certification of availability of credits, and the wetland delineation data sheets.

4. On July 14, 2003, the wetland delineation data sheets were submitted to DEQ, but Wilton's authorized agent, Koontz-Bryant, P.C., requested a 30-day time extension to submit the remaining requested information. DEQ staff granted the extension.
5. By letter dated October 8, 2003, DEQ staff notified Mr. Johnson that processing of the application was being suspended in accordance with 9 VAC 25-210-80.D and that in order to reactivate the application, the information requested by DEQ in the July 3, 2003 letter must be submitted. The October letter also stated, "Note that impacts to state waters taken without a VWP permit is a violation of state law." No permit was ever issued by DEQ for impacts to surface waters on the Site.
6. In 2007, a building, parking lot and associated infrastructure were constructed on the Site. Construction resulted in the clearing and filling of 0.14 acre of forested wetlands. Construction was complete on November 29, 2007.
7. Va. Code §62.1-44.15:20 and 9 VAC 25-210-50 state that no person shall fill wetlands or surface waters, or cause significant alteration or degradation of existing wetland acreage or functions, or otherwise alter the physical, chemical or biological properties of surface waters to make them detrimental to animal or aquatic life, unless such activities are conducted in compliance with a VWP permit.
8. On August 15, 2008, DEQ staff visited the Site and confirmed that wetlands were filled as a result of the construction activities.
9. DEQ issued Notice of Violation number 08-08-PRO-702 on September 5, 2008 for the unauthorized impacts to wetlands on the Site.
10. On September 22, 2008, BHI submitted information regarding the wetland impacts that occurred on the Site. The information indicated that the impacts were the result of an oversight during project planning.
11. BHI and Wilton are in violation of Va. Code §62.1-44.15:20 and 9 VAC 25-210-50 for the unauthorized impact of 0.14 acres of forested wetland.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders Beverly Hills, Inc. and The Wilton Companies, LLC, and Beverly Hills, Inc. and The Wilton Companies, LLC agree, to perform the actions described in Appendix A. In addition, the Board orders Beverly Hills, Inc. and The Wilton Companies, LLC, and Beverly Hills, Inc. and The Wilton Companies, LLC voluntarily agree, to pay a civil charge

of **\$8,709** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Beverly Hills, Inc. and The Wilton Companies, LLC. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Beverly Hills, Inc. and The Wilton Companies, LLC, for good cause shown by the Beverly Hills, Inc. and The Wilton Companies, LLC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in Notice of Violation No. 08-08-PRO-702 issued by DEQ on September 5, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Project as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Beverly Hills, Inc. and The Wilton Companies, LLC admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Beverly Hills, Inc. and The Wilton Companies, LLC consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Beverly Hills, Inc. and The Wilton Companies, LLC declare they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Beverly Hills, Inc. and The Wilton Companies, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Beverly Hills, Inc. and The Wilton Companies, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Beverly Hills, Inc. and The Wilton Companies, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Beverly Hills, Inc. and The Wilton Companies, LLC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Beverly Hills, Inc. and The Wilton Companies, LLC intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Beverly Hills, Inc. and The Wilton Companies, LLC. Notwithstanding the foregoing, Beverly Hills, Inc. and The Wilton Companies, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.

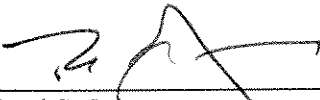
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Beverly Hills, Inc. and The Wilton Companies, LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Beverly Hills, Inc. and The Wilton Companies, LLC from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Beverly Hills, Inc. and The Wilton Companies, LLC voluntarily agree to the issuance of this Order.

And it is so ORDERED this April 29, 2009.



Richard F. Weeks, Regional Director
Department of Environmental Quality

Beverly Hills, Inc. and The Wilton Companies, LLC voluntarily agree to the issuance of this Order.

By: 
Richard S. Johnson
President, Beverly Hills, Inc. and
Managing Member, The Wilton Companies, LLC


Date: 12/18/09

Commonwealth of Virginia
City/County of HENRICO

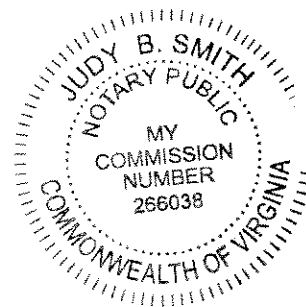
The foregoing document was signed and acknowledged before me this 18TH day of

DECEMBER, 2009 by RICHARD S. JOHNSON, who is
(name)

President of Beverly Hills, Inc. and Managing Member of The Wilton Companies, LLC, on
behalf of Beverly Hills, Inc. and The Wilton Companies, LLC.


Notary Public

My commission expires: 3-31-2010



APPENDIX A

1. No later than **January 31, 2009**, Beverly Hills, Inc. and The Wilton Companies, LLC shall submit documentation of the purchase 0.42 acre of wetland credits from the Willis River Mitigation Bank to DEQ. With advance approval by DEQ, BHI and Wilton may purchase the required credits from an alternative mitigation bank in the same or an adjacent hydrologic unit code as the Site, pursuant to Va. Code § 62.1-44.15:23.